

COLD CREEK ADJUDICATION

DECREE No. 29348

SUPERIOR COURT FOR SISKIYOU COUNTY



Cold Creek Stream System SISKIYOU COUNTY

Decree Entered July 5, 1978,

In Civil Judgments

Volume 43, Page 461

1978



CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

ENCLOSED

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ADJUDICATION

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SYSTEM WITHIN CALIFORNIA
IN COUNTY OF SISKIYOU

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VOL	43
PAGE	461

TABLE OF CONTENTS

	<u>Page</u>
DECREE DETERMINING AND ESTABLISHING RIGHTS	1
Definitions	2
1. Water Code	2
2. Stream System	2
3. Claimant	3
4. Direct Diversion	3
5. Storage	3
6. Natural Flow	3
7. State Water Resources Control Board Map	4
General Entitlement	4
8. Diversion and Use of Water	4
9. Rotation	5
10. Priority Classes	5
11. Reasonable Diversion and Use	6
12. Schedules of Allotment	6
13. Post-1914 Appropriative Water Rights (Schedule E)	6
14. Season of Use	7
15. Domestic Use	7

	<u>Page</u>
16. Stockwatering Use	7
17. Irrigation Use	7
18. Power Use	7
19. Combined Uses	8
Special Provisions	9
20. Logging, Road Building and Stockwatering	9
21. High Ditch and Low Ditch	9
22. Silva-Lennox Ditch	10
SCHEDULE A - DESCRIPTION OF PLACES OF USE	11
SCHEDULE B - LOCATION OF POINTS OF DIVERSION	13
SCHEDULE C - ALLOTMENTS TO CLAIMANTS FROM UPPER PORTION OF THE COLD CREEK STREAM SYSTEM	15
SCHEDULE D - ALLOTMENTS TO CLAIMANTS FROM LOWER PORTION OF THE COLD CREEK STREAM SYSTEM	16
SCHEDULE E - POST-1914 APPROPRIATIVE WATER RIGHTS IN ORDER OF PRIORITY	17
IT IS FURTHER ORDERED, ADJUDGED AND DECREED	18
MAP	In Back of Decree.

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SISKIYOU

In the Matter of the Determination)
of the Rights of Various Claimants)
to the Water of Cold Creek)
Stream System within Siskiyou)
County, California)

NO. 29348

The above-entitled cause having come on regularly for hearing, trial, and determination on April 25, 1977, before this Court sitting without a jury; all parties in interest in said proceedings having been duly and regularly notified of said hearing, trial, and determination; the State Water Resources Control Board (hereinafter referred to as Board) having filed with the Clerk of this Court a certified copy of its Order of Determination together with the original evidence filed with or taken before the Board and certified by it; exceptions to the Order of Determination having been filed by claimant Wallace Lemos; the Board having moved the Court to amend and affirm the Order of Determination as amended; the Court having granted claimant Lemos additional time to submit new evidence to the Board for its consideration; the Board having filed a Response Brief and Response to Statement of Factual and Legal Bases of claimant Lemos' Exceptions with the Court, which reviewed the evidence submitted by claimant Lemos; the Court having held a

hearing February 24, 1978, to assure that the Court file was complete and to receive additional statements from the parties; the Court having viewed the stream system; the matter having been submitted for decision and the Court being fully advised in the premises announced its intended decision on May 1, 1978, by written minute order to affirm the Order of Determination as filed and as amended by motion of the Board, subject to subsequent determination concerning the financial obligations as among the various parties to maintenance; the Court having notified the Board to prepare a Proposed Decree; claimant Lemos having requested the preparation of Findings of Fact and Conclusions of Law pursuant to Rule 232(b) of California Rules of Court; the Court having notified the Board to prepare Proposed Findings of Fact and Proposed Conclusions of Law; the Board having filed Proposed Findings of Fact and Proposed Conclusions of Law and a Proposed Decree; the Court having made and filed herein its Findings of Fact and Conclusions of Law, now therefore in accordance therewith:

IT IS ORDERED ADJUDGED, AND DECREED that the several rights of all claimants in and to the use of water of the Cold Creek stream system within Siskiyou County, California, are as hereinafter set forth:

Definitions

1. Water Code

The term "Water Code" means the State of California Water Code.

2. Stream System

The term "stream system" means the Cold Creek stream system including all tributaries from their headwaters to a point where Cold Creek crosses the east line of Section 7, T47N,

R4W, MDB&M. Underground water supplies other than subterranean streams flowing through known and definite channels are not included within this meaning of the term.

3. Claimant

The term "claimant" means a party whose right to the use of water of Cold Creek stream system is determined herein.

4. Direct Diversion

Direct diversion is defined as the diversion of water from the stream system and conveyance and application to beneficial use without intermediate storage, except such reasonable short term regulatory storage as may be practiced for the purpose of creating a convenient head for irrigation or other beneficial use allowed herein.

5. Storage

Storage is defined as the collection of natural flow in a reservoir during a time of high stream flow such as the winter and spring months for use during a time of deficient stream flow such as the summer and fall months.

6. Natural Flow

The term "natural flow" means such flow as will occur at any point in a stream from the runoff of the watershed which it drains, from springs and seepage which naturally contribute to the stream, and from waste and return flow from dams, conduits, and irrigated lands, as distinguished from water released directly from storage for redirection and use, or water imported from another watershed which is released directly to the natural channel for conveyance to the place of beneficial use.

7. State Water Resources Control Board Map

The State Water Resources Control Board Map, hereinafter referred to as SWRCB map, means that map prepared by the Board from surveys made in 1975 as revised and amended in 1976 and 1978 by the Board, and entitled, "Cold Creek Stream System, showing Diversions and Irrigated Lands, Siskiyou County, California, dated 1978".

Said SWRCB map, comprising one sheet, is by reference incorporated herein as an integral part of this decree.

General Entitlement

8. Diversion and Use of Water

The claimants in this decree are entitled to the use of water of Cold Creek stream system on their lands from points of diversion described under their respective names in Schedules A and B and shown on the SWRCB map, during the seasons specified in paragraph 14, and in the amounts allotted from the various sources under the priorities and for the uses set forth after their respective names in Schedules C, D, and E and paragraphs 20, 21, and 22, and as said uses are defined in paragraphs 15 through 19. The points of measurement of the amounts of water allotted shall be the point of diversion from the stream system unless otherwise specified. Allotments expressed in units of cubic feet per second are direct diversion amounts, and allotments expressed in terms of acre-feet are annual storage amounts.

9. Rotation

Under direct diversion, claimants may rotate in the use of water with other related rights in the same schedule provided that the instantaneous rate of diversion at any diversion point shall never exceed the total allotment for that diversion and provided further that water not required by any claimant for an extended period of time shall accrue to natural flow. In no event shall regulatory storage or rotation unreasonably interfere with the exercise of other rights in the Cold Creek stream system, junior or senior in priority.

10. Priority Classes

"Priority class" when used herein is a class of rights each one of which is equal in priority and correlative in right with all other rights of the same class appearing within the same schedule, so that in the event of a supply of water sufficient to supply only part of the entitlement of any specific priority class, said available supply shall be prorated in accordance with allotments in that priority class. No priority class is entitled to the use of any water until all rights of all priority classes with lower numbers have been fully satisfied. Thus, within the same schedule, all rights of the second priority class are inferior in priority and subordinate to all rights of the first priority class, but are superior in priority and entitled to full satisfaction ahead of all of the remaining higher number priority classes.

11. Reasonable Diversion and Use

Nothing contained herein shall, or shall be construed to, allot to any claimant a right to waste water, or to divert from the Cold Creek stream system at any time or to export out of the stream system a quantity of water in excess of an amount reasonably necessary for his beneficial use under a reasonable method of use and reasonable method of diversion, nor to permit him to exercise his right in such a manner as to unreasonably impair the quality of the natural flow.

12. Schedules of Allotment

The allotments of water of the Cold Creek stream system, except allotments for logging, roadbuilding and stockwatering described in paragraph 20 are set forth in three separate schedules as follows:

Upper Portion of the Cold Creek stream system set forth in Schedule C.

Lower Portion of the Cold Creek stream system set forth in Schedule D.

Post-1914 Appropriative Water Rights set forth in Schedule E.

The rights in Schedule C are independent from the rights in Schedule D. The manner of distribution of allotments from the High Ditch and Low Ditch and the Silva-Lennox Ditch is described in paragraphs 21 and 22, respectively.

13. Post-1914 Appropriative Water Rights (Schedule E)

Post-1914 appropriative water rights set forth in Schedule E are inferior in priority to all rights in Schedules C and D to the extent such other rights are reasonably and beneficially

used during the authorized seasons of use. Every right in Schedule E is based on an application to appropriate water filed with the Board. Jurisdiction over incomplete appropriations remains with the Board. When license is issued the licensee or the Board may petition the Court for a supplemental decree confirming the right in accordance with the license.

14. Season of Use

All allotments in Schedules C and D by direct diversion for domestic, stockwatering, and power uses shall be for continuous use throughout each year. All allotments for irrigation use shall be for the season from about April 1 to about October 1 of each year, or until the first hard frost, whichever occurs later.

15. Domestic Use

Domestic use is limited to water used for household purposes, watering of domestic animals, and irrigation of up to one-half acre of lawn, garden, and family orchard and for recreational domestic use by campers, hikers and similar recreational users.

16. Stockwatering Use

Stockwatering use is limited to water required by commercial livestock.

17. Irrigation Use

Irrigation use is limited to surface application of water for the purpose of meeting moisture requirements of growing crops.

18. Power Use

Power use is limited to the use of falling water for generation of electrical or mechanical power.

19. Combined Uses

First priority allotments for domestic or stockwatering purposes that are commingled with irrigation or power allotments and conveyed in a common ditch shall be considered as incidental to the allotments for the other uses and shall not be in addition thereto unless the supply available under the allotment for irrigation or power is insufficient to provide water for the domestic or stockwatering use. In such event, the domestic or stockwatering allotment is to be measured at the point of use; however, the aggregate of such allotment and the amount of carriage water allowed shall not exceed the maximum ditch rates set forth below.

To provide water for conveyance losses and domestic, stockwatering and power purposes during the nonirrigation season from about October 1 to about April 1, all claimants with first priority class allotments are entitled to the amount of such first priority allotments at their places of use during said winter months limited, in the aggregate, to the following maximum rates of diversion at the following specified points of diversion or ditches:

<u>Diversion Number</u>	<u>Amount Cubic feet per second</u>
1 or 2 (Measured at the division weir of the Silva-Lennox Ditch)	2.0
3 or 4	0.5
6	0.3
High Ditch	0.5
7 or 9	0.3
8	0.2
10 or 11	0.4
12	0.2

Special Provisions

20. Logging, Road Building and Stockwatering

All owners of riparian property in Cold Creek stream system may divert by direct diversion throughout the year, subject to all upstream rights, water as may be necessary for logging, road building and road maintenance, or stockwatering purposes from any point of diversion on the property owner's land provided that such amount of water or method of diversion shall not unreasonably impair the rights of other claimants.

21. High Ditch and Low Ditch

Carter, Lucia, Boos, and B. Clifford are entitled to intercept and divert from Springs No. 3 and No. 4 up to 4.16 cfs into the High Ditch between Diversion Points 6 and 3 as set forth in Schedule D for domestic and stockwatering purposes and for irrigation of

lands as set forth in Schedule A. The High Ditch begins at Diversion 6 and extends northeastward crossing Cold Creek and, being augmented thereby at Diversion 3, continues northwestward to its terminus in the southwest quarter of Section 5. On a continuous flow basis the combined allotment for Boos and B. Clifford at Diversions 3 and 4 shall not exceed 2.52 cfs.

22. Silva-Lennox Ditch

During the irrigation season the flow in the Silva-Lennox Ditch as measured at the division weir shall be limited to 2.91 cfs at all times that the flow in Deer Creek above Diversion 21 exceeds 1.02 cfs. When the flow in Deer Creek above Diversion 21 recedes to 1.02 cfs or less, diversion into the Silva-Lennox Ditch may be increased immediately to maximum of 3.93 cfs as measured at the division weir.

Flow in the Silva-Lennox Ditch shall be divided at the division weir as follows: when the flow is 2.91 cfs or less it shall be divided $\frac{1}{4}$ to the O'Neill-Cobb lateral and $\frac{3}{4}$ to the Lemos lateral; when the flow is more than 2.91 cfs it shall be divided $\frac{0.73}{2.91}$ cfs to the O'Neill-Cobb lateral and all other flows to the Lemos lateral.

SCHEDULE A
DESCRIPTION OF PLACES OF USE

1	2	Location of Place of Use					6	7
		3	4	5				
			Town-					
Name of Owner and	Diversion	Subdivision	ship	Range	Irr. Area,	Total Irr.		
Diversion System	Number	and Section	North	West	Acres	Area, Acres		
<u>Ballin, Estate of R. W.</u>								
Ditch No. 1	7	NW SE 8	47	4	6			
Ditch No. 2	9	S $\frac{1}{2}$ 8	47	4	49			
Ditch No. 3	10	S $\frac{1}{2}$ 8	47	4	5			
Ditch No. 4	11	8	47	4	70			
Ditch No. 5	12	8	47	4	12		142	
<u>Boos, P. N. & M. E.</u>								
High Ditch	3,5,6	NW 9	47	4	20			
Low Ditch	4	N $\frac{1}{2}$ 8			139			
		SE SW 5			16		175	
<u>Carter, A.</u>								
High Ditch	6	NE 8	47	4	4			
Carter Ditch	8	N $\frac{1}{2}$ 8	47	4	36		40	
<u>Clifford, B. J.</u>								
High Ditch	3,5, 6	SE NW 8	47	4	1.			
Low Ditch	4							
Carter Ditch	8	SE NW 8	47	4	18		19	
<u>Cobb, J.</u>								
Silva-Lennox Ditch	1, 2	S $\frac{1}{2}$ 32	48	4	20		20	
<u>Flock, L. G. & W. V.</u>								
Proposed	1c	SE SE 9	47	4	5		5	
<u>Lemos, A. F. & Estate of E. G.</u>								
Silva-Lennox Ditch	1, 2	SE 33	48	4	21			
		NW SW 34	48	4	4			
		4	47	4	135		160	
		E $\frac{1}{2}$ 4	47	4	Powerplant Use			
Proposed	2a	SW NE 9	47	4	15		15	
Proposed	4a	N $\frac{1}{2}$ SW 9	47	4	20		20	

SCHEDULE A (Continued)
DESCRIPTION OF PLACES OF USE

		Location of Place of Use				
1	2	3	4	5	6	7
Name of Owner and Diversion System	Diversion Number	Subdivision and Section	Town- ship North	Range West	Irr. Area, Acres	Total Irr. Area, Acres
<u>Lucia, R. et al</u>						
High Ditch	5, 6	NE 8	47	4	17	
		SW NW 9	47	4	11	28
<u>Maschmeyer, J. A. & W. R.</u>						
Proposed	1d	SW SW 10	47	4	Domestic Use	
<u>O'Neill, J. E. & J. E.</u>						
Silva-Lennox Ditch	1, 2	S ₂ 32	48	4	6	6
<u>Schmidt, L. T. & D. C.</u>						
Proposed	1e	NW SW 10	47	4	Domestic Use	
<u>U. S. Forest Service</u>						
Stockwater Pipeline	1a	15	47	4	Stockwatering	
Directly From Source	1b	15	47	4	Domestic & Stockwatering Uses	
		21	47	4		
		23	47	4		
		25	47	4		
		26	47	4		
		27	47	4		

SCHEDULE B
LOCATION OF POINTS OF DIVERSION

1 Diver- sion Number	2 Diversion Name	3 Source	4 Location of Diversion Point				Town- ship	Range West
			Coordinate Distances	Ref. Cor.	Sec.	1/4		
<u>Cold Creek and Tributaries</u>								
1	Silva-Lennox Ditch	South Fork Cold Creek (Cold Creek Spring No. 1)	N1320 W1700	SE	9	SW	SE 47	4
1a	U. S. Forest Service Spring	Unnamed Spring			15	SW	SE 47	4
1b	U. S. Forest Service Un- designated Points	Cold Creek Tributaries			15 21 23 25 26 27		47	4
1c	Flock (proposed)	South Fork Cold Creek	N10 W400	SE	9	SE	SE 47	4
1d	Maschmeyer (proposed)	Unnamed spring	N800 E1300	SW	10	SW	SW 47	4
1e	Schmidt (proposed)	Unnamed Spring			10	NW	SW 47	4
2	Silva-Lennox Ditch	East Fork Cold Creek	S1600 W1400	NE	9	SW	NE 47	4
2a	Lemos (proposed)	East Fork Cold Creek	S1600 W1500	NE	9	SW	NE 47	4
2b	Holland (proposed)	East Fork Cold Creek	S1600 E2500	NW	9	SE	NW 47	4
2c	Holland (proposed)	Unnamed Stream	S300 E2400	NW	9	NE	NW 47	4
3	High Ditch	Cold Creek	S1200 E1500	NW	9	NE	NW 47	4
4	Low Ditch	Cold Creek	S1000 E400	NW	9	NW	NW 47	4

SCHEDULE B (Continued)
LOCATION OF POINTS OF DIVERSION

1 Diver- sion Number	2 Diversión Name	3 Source	4 Location of Diversion Point							
			Coordinate Distances	Ref. Cor.	Sec.	1 4	1 4	Town- ship North	Range West	
4a	Lemos (proposed)	Cold Creek Springs No. 2 and No. 3			9	N $\frac{1}{2}$	SW	47	4	
5	High Ditch	Gold Creek Springs No. 3a/	N2700 W100	SE	8	SE	NE	47	4	
6	High Ditch	Cold Creek Springs No. 4	N2600 W1100	SE	8	NE	SE	47	4	
7	Ballin Ditch No. 1	Cold Creek Springs No. 5	N2000 W1200	SE	8	NE	SE	47	4	
8	Carter Ditch	Cold Creek Springs No. 5	N2600 W1300	SE	8	NE	SE	47	4	
9	Ballin Ditches No. 2	Cold Creek Springs No. 6	N1700 W2000	SE	8	NW	SE	47	4	
10	Ballin Ditch No. 3	Cold Creek Springs No. 7	N900 W2100	SE	8	SW	SE	47	4	
11	Ballin Ditch No. 4	Cold Creek Springs No. 7	N1200 W2500	SE	8	SW	SE	47	4	
12	Ballin Ditch No. 5	Iron Creek	N100 E2200	SW	8	SE	SW	47	4	
<u>Deer Creek and Unnamed Stream Tributary to Copco Lake</u>										
14	Holland Reservoir	Unnamed Stream b/	S50 E1600	NW	5	NE	NW	47	4	
21	Deer Creek Ditch No. 7	Deer Creek	N2000 W50	SE	4	NE	SE	47	4	

a/ A series of nine springs which flow into the 1,800 foot upper reach of the High Ditch.

b/ Used as regulatory reservoir for water from Silva-Lennox Ditch.

SCHEDULE C
ALLOTMENTS TO CLAIMANTS FROM
UPPER PORTION OF THE COLD CREEK STREAM SYSTEM

	: Diversion :	: Area :	Allotments by Priority :				
Name of Claimant	: No. on	: Use :	Served, :	in Cubic Feet per Second			: Total
	: SWRCB Map :	: Acres :	1st:	2nd:	3rd:	: Amount	
U. S. Forest Service	1a	Stock	0.0031			0.0031	
	1b	Dom	0.02			0.02	
Flock	1c	Irr	5	a/	0.10	0.10	
Maschmeyer	1d	Dom	0.01			0.01	
Schmidt	1e	Dom	0.01			0.01	
Lemos	1 & 2	Irr & Power	160	3.20 b/		3.20	
O'Neill	1 & 2	Irr	6	0.18 b/ c/		0.18	
Cobb	1 & 2	Irr	20	0.55 b/ c/		0.55	
Lemos	2a	Irr	15	0.01	0.29	0.30	
Boos	3 & 4	Irr	125		2.50 d/	2.50	
B. Clifford	3 & 4	Irr	1		0.02 d/	0.02	
TOTALS			330	3.9831	2.52 0.39	6.8931	

a/ 100 gallons per day in first priority for domestic use.

b/ See paragraph 22.

c/ O'Neill and Cobb both have the right to maintain the Holland dam and reservoir (Diversion 14) on Holland's property, for regulatory storage of their allotments.

d/ See paragraph 21.

SCHEDULE D
ALLOTMENTS TO CLAIMANTS FROM
LOWER PORTION OF THE COLD CREEK STREAM SYSTEM

Name of Claimant	: Diversion	:	: Area	:	Allotments by Priority			:
	: No. on	: Use	: Served,	:	in Cubic feet per Second			: Total
	: SWRCB Map	:	: Acres	:	1st:	2nd:	3rd:	: Amount
Lemos	4a & 5	Irr	20		0.01		0.39	0.40
Carter	5 & 6 <u>a/</u>	Irr	4		0.01		0.07	0.08
Lucia	5 & 6 <u>a/</u>	Irr	28		0.07	0.49		0.56
Boos	5 & 6 <u>a/</u>	Irr	175		0.41	3.09		3.50
B. Clifford	5 & 6 <u>a/</u>	Irr	1		0.01	0.01		0.02
Ballin	7 & 9	Irr	55		0.28	0.82		1.10
Boos	7	Dom			0.01			0.01
Carter	8	Irr	36		0.18		0.54	0.72
B. Clifford	8	Irr	18		0.09		0.27	0.36
Ballin	10 & 11	Irr	75		0.38	1.12		1.50
Ballin	12	Irr	12		0.06	0.18		0.24
TOTALS			424		1.51	5.71	1.27	8.49

a/ See paragraph 21

SCHEDULE E

Post-1914 Appropriative Water Rights
In Order of Priority

1. Estate of E. G. Lemos has on file unapproved Application 24841 with a priority of July 22, 1975 for diversion at the points designated on the SWRCB map as Diversions 1 and 2. 2.99 cfs by direct diversion from April 1 to November 1 of each year for irrigation, 4,350 gpd from January 1 to December 31 for domestic use, and 35 acre-feet by storage to be collected in a reservoir from November 1 of each year to April 1 of the succeeding year. The lands to be irrigated are 740 acres within Sections 4 and 9 of T47N and Section 33 of T48N all in R4W, MDB&M.
2. Paul Norman Boos holding Permit 16929 issued an Application 24878 has the right to divert at a point designated on SWRCB map as Diversion 4b, eight acre-feet per annum into a reservoir during the period from November 1 of each year to April 1 of the succeeding year for irrigation of four acres adjacent to the reservoir and for stock watering and recreational use at the reservoir on lands described in Permit 16929, all to the extent such right is completed under provisions of the Water Code.
3. Joseph E. O'Neill has on file unapproved Application 25011 with a priority of February 27, 1976 for diversion at the points designated on the SWRCB map as Diversions 1, 2, and 14, 24 acre-

feet by storage to be collected in a reservoir from November 1 of each year to April 1 of the succeeding year for irrigation of six acres and domestic, stockwatering, and fire protection uses on the O'Neill property below the reservoir. The rate of diversion to offstream storage from Diversion 1 and 2 will be 0.75 cfs. This reservoir is currently used as a regulatory reservoir for water flowing in the O'Neill-Cobb lateral of the Silva-Lennox Ditch.

William Hal Holland has on file unapproved Application 25283 with a priority of March 7, 1977 for diversion at the points designated on the SWRCB map as Diversions 2b and 2c, 45 acre-feet per annum by storage to be collected in a reservoir from November 1 of each year to April 1 of each succeeding year for irrigation of 15 acres and domestic use adjacent to the reservoir and for stockwatering and recreational purposes at the reservoir. The lands to be irrigated are within the north half of Section 9 of T47N, R4W, MDB&M.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

- A. That the Court retains continuing jurisdiction of the parties to this proceeding, and of the subject matter hereof, and upon application of the Board or any party hereto, or successor in interest thereof, or upon its own motion, to review this decree and to change or modify the same as the interests of justice may require.

- b. That each and every party to this action, his or her agents, successors, grantees and assigns, be and hereby are perpetually enjoined and restrained from doing anything in violation of the terms or provisions of this judgment and decree, and from diverting any water from said Cold Creek Stream System as defined herein at any time in excess of a quantity reasonably necessary for, and actually applied to, reasonable beneficial use, under and by reasonable methods of diversion and use, and from doing anything, directly or indirectly, that will obstruct or interfere with any right of another adjudged and decreed herein.
- c. That fish by-pass structures be constructed at Diversion Points 3 and 4 meeting the specifications of the State Department of Fish and Game.
- d. That a by-pass structure be constructed at Diversion 2 which will facilitate regulation and permit by-pass downstream to East Fork Cold Creek of water in excess of allotments to the Silva-Lennox Ditch.
- e. That a new division structure be constructed at the existing division weir to divide the allotments from the Silva-Lennox Ditch.

- f. That a watermaster, appointed by the State Department of Water Resources in accordance with Part 4 of Division 2 of the Water Code, regulate and control diversion of water at Diversion Points 2, 3, and 4, and at the division weir on the Silva-Lennox Ditch.
- g. That the matter of financial obligations with respect to maintenance is reserved for further ruling and determination, depending upon the ability of the parties hereto to resolve the issue by agreement or to notice the same for hearing with a specification, in such notice of hearing, of the evidence to be presented, i.e. reference to the present record or introduction of additional evidence.
- h. That any person who has failed to appear and submit proof of his claim as provided in Chapter 3, Division 2 of the Water Code, shall be barred and estopped from subsequently asserting any rights heretofore acquired upon the Cold Creek stream system as defined herein and has forfeited all rights to water heretofore claimed by him on said system, other than as provided in this decree, unless entitled to relief under the laws of this State.

Done this 5th day of July, 1978

JAMES E. KLEVER
Judge of the Superior Court